

Webcor Packaging, Inc. and Local 332, International Brotherhood of Teamsters, AFL-CIO.
Cases 7-CA-31809, 7-CA-31896, and 7-RC-19513

December 18, 1995

**DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION**

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND TRUESDALE

On October 28, 1993, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief to the General Counsel's answering brief. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs¹ and has decided to affirm the judge's rulings, findings,² and conclusions as further discussed below and to adopt the recommended Order.

Background

The judge found that the Plant Council established at the Respondent's facility was a labor organization within the meaning of Section 2(5) of the Act, and that the Respondent violated Section 8(a)(2) of the Act by dominating and interfering with the formation and administration of the Plant Council and by contributing financial and other support to the Plant Council. We agree with the judge's findings, for the reasons set forth by him, and for the reasons set forth below.

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 363 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We agree with the General Counsel that it would have been preferable for the judge to explicitly discredit the employee testimony regarding the statements allegedly made by Plant Manager Rikard, or to explicitly credit Rikard's denial. Nevertheless, the judge did not err in holding that, because either version was just as believable, the General Counsel failed to carry his burden of proving the allegation that the statements violated Sec. 8(a)(1). See *Bethel Home, Inc.*, 275 NLRB 154, 157 (1985).

Discussion

1. We agree with the judge's finding that the Plant Council satisfies the criterion set forth in Section 2(5) of the Act that a statutory labor organization is one that exists, in whole or in part, for the purpose of *dealing with* employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. The Board has explained that "dealing with" contemplates "a bilateral mechanism involving proposals from the employee committee concerning the subjects listed in Sec. 2(5), coupled with real or apparent consideration of those proposals by management." *Electromation, Inc.*, 309 NLRB 990, 995 fn. 21 (1992), enfd. 35 F.3d 1148 (7th Cir. 1994). The bilateral mechanism thus ordinarily entails a pattern or practice in which a group of employees, over time, makes proposals to management, and management responds to these proposals by acceptance or rejection by word or deed. *E. I. du Pont & Co.*, 311 NLRB 893, 894 (1993). The record evidence establishes that this is precisely how the Respondent designed the Plant Council to operate.

Robert Sibilsky, the Respondent's vice president for operations who ordered the establishment of the Plant Council, testified that the Plant Council was designed to offer recommendations to management about proposed changes in working conditions and that management would consider whether to accept or reject those recommendations. Sibilsky testified:

What you're looking for out of those bodies and specifically out of the Plant Council, is a consensus building type of recommendation that would come—that would be a recommendation from that entire committee to Management about a proposed change . . . and if there was a recommendation to be made, it was to be considered by Management.

Sibilsky testified, for example, that by written memorandum dated November 15, 1991, the Plant Council requested reconsideration of the Respondent's policy for issuing employee vacation paychecks. Sibilsky stated that Respondent's management considered the proposal, but rejected it and decided to retain its procedures.³ In addition, Mathew Newcomb, an employee

³ The following exchange took place between Sibilsky and counsel for the Respondent:

Q. There was previous testimony that I think the Plant council or the steering committee . . . got involved with an issue cutting checks . . . for employees when they go on vacation. Do you have any direct information on that subject.

A. The vacation pay issue was addressed at the plant council.

Q. Okay.

A. And it came to me as a question.

There were a couple of issues that were raised. One, employees were asking why we had to deduct federal taxes, state taxes,

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member of the Plant Council, testified that the Plant Council proposed to management a policy that the Respondent would pay for employee safety shoes, and that the Respondent's management considered and approved the proposal.⁴

Indeed, Sibilsky was specifically asked by counsel for the General Counsel whether the Plant Council had the authority to make a final determination, without management approval, as to whether any policy recommendation was to be effectuated. Sibilsky replied:

[O]f substantive nature, no . . . the area that they . . . cannot make decisions on are those that deal with—with the handbook—those issues related to wages, hours, that sort of thing. They don't have the authority to make that decision.

Sibilsky emphasized that management would treat recommendations on such issues from the Plant Council "very seriously," and that management would "have to take it under advisement."⁵

We accordingly conclude that the record evidence establishes that the Plant Council existed for the purpose, at least in part, of following a pattern or practice of making proposals to management which would be considered and accepted or rejected, and that such a pattern in fact occurred.⁶ We therefore agree with the

from their vacation check. They didn't want that to take place. *Could we change what we did? And not do that?*

The second question was, the employees normally received their vacation pay check on their anniversary date. *They wanted to change that to when they took their vacation, could they get their vacation check. I responded in writing to the plant council . . . that we could not change the methodology of how we distributed the vacation checks. And so we stayed with the program. It was not changed.* [Emphasis added.]

⁴Newcomb testified:

Q. And tell us, as much as you remember, about what's been discussed in the Plant Council meetings.

A. . . . And safety shoes, we [the Plant Council] come up with a policy for safety shoes. *The company agreed to give forty five dollars for everybody buying a pair of OSHA approved safety shoes.* . . . [Emphasis added.]

⁵We note that on advice of counsel the Respondent temporarily restricted during the pendency of the instant proceeding the Plant Council procedure of recommending proposals to management.

⁶The judge additionally found, and we agree, that the Plant Council acted in a representational capacity because its employee-members were elected by the Respondent's work force. Compare *NLRB v. Scott & Fetzer Co.*, 691 F.2d 288, 294–295 (6th Cir. 1982) (continuous rotation of employee committee members rather than an electoral process militates against finding labor organization status). We note further that the Plant Council canvassed employees for their opinion regarding policy changes the Plant Council was considering. For example, the Plant Council circulated to all employees a copy of its proposed attendance program, asking employees to read the proposal and respond back to the Plant Council, and attaching a comment form. The Plant Council's minutes additionally reflect its efforts in "trying to get the feeling of what the employees actually wanted on vacation checks."

In light of our finding that the Plant Council acted in a representational capacity, it is unnecessary to the disposition of this case to determine whether an employee group could be found to constitute

judge that the element of "dealing with" is present in this case.⁷

2. We further agree with the judge that the Respondent unlawfully dominated the formation and administration of the Plant Council. A labor organization that is the creation of management, whose structure and function are essentially determined by management, and whose continued existence depends on the fiat of management, is one whose formation or administration has been dominated under Section 8(a)(2) of the Act. *Electromation*, supra, 309 NLRB at 995. Each of these elements is present in this case.

The record evidence establishes that the Plant Council was the creation of management. By memorandum dated February 11, 1991, Vice President Sibilsky directed Olin Rikard, Respondent's director of manufacturing, to establish the Plant Council and to have it in place by March 15, 1991. Two days later, a memorandum from Mark Blackburn, Respondent's plant superintendent, was posted to all employees directing the establishment of the Plant Council, describing the goals for the Plant Council, and detailing the election process.

The record evidence further establishes that the structure and function of the Plant Council were essentially determined by the Respondent. Sibilsky directed in his memorandum of February 11, 1991, that "[t]he Plant Council will consist of five hourly employees who will be elected by the hourly work force," and that "the Plant Council will function as a policy development body . . . involved with the development of plant policies, the employee handbooks, the creation of a grievance procedure that will involve council member representation, and with the process of hourly compensation and benefits." The Respondent further determined the number of management officials who would serve on the Plant Council, and selected those individuals. Thus, the Respondent determined the function of the Plant Council, defined the subject matter to be addressed by the Plant Council, and announced the number of employee and management representatives that would serve on the Plant Council.⁸

a labor organization absent a finding that it acted as a representative of other employees. See *Electromation*, supra, 309 NLRB at 994 fn. 20.

⁷We thus find that the record evidence contradicts the Respondent's contention in its exceptions that the Plant Council was merely a unilateral employee communication device and brainstorming group. Compare *E. I. du Pont & Co.*, supra at 894 (committee that exists for the purpose of sharing information with the employer, or engaging in brainstorming without making specific proposals, is not a statutory labor organization).

⁸We have carefully considered the Respondent's exceptions stating that the Plant Council created its own bylaws, and that the Employee Involvement Steering Committee had some involvement in the election process for Plant Council representatives. These facts are insufficient to outweigh the record evidence that the function, struc-

The record evidence further unequivocally establishes that the existence of the Plant Council depended entirely on the authorization and approval of the Respondent. Although the Respondent contends in its exceptions that the Respondent's employees had expressed an interest in a plant council in 1989, it is undisputed that the Plant Council was not in fact initiated by the employees but by Sibilsky's management directive. Sibilsky testified that *he* decided in late January 1991 to implement the Plant Council because of problems he perceived in the operation of the Employee Involvement Steering Committee, which had been established to focus on issues of quality, waste reduction, housekeeping, safety, and productivity but was then being asked by employees to involve itself with "policy" issues.⁹ It was Sibilsky, moreover, who ordered the establishment of the Plant Council to be halted following the February 22, 1991 election based on his judgment that there was insufficient support for the Plant Council. And it was the Respondent that reestablished the Plant Council by directing in late April or early May 1991 that a second election for Plant Council be conducted. Based on these facts, there can be no dispute that the Respondent has the authority to establish and disband the Plant Council entirely at its own discretion.

We accordingly agree with the judge's conclusion that the impetus behind the formation of the Plant Council emanated from the Respondent, and that the Plant Council has no effective existence independent of the Respondent's active involvement and approval. A finding of unlawful domination is accordingly warranted. *Electromation*, supra, 309 NLRB at 996.

We recognize that this case arises in the Sixth Circuit. As the Respondent notes, the Sixth Circuit has, on occasion, declined to enforce decisions of the Board finding that employer-sponsored committees violated Section 8(a)(2). See *NLRB v. Scott & Fetzer Co.*, supra; *Airstream, Inc. v. NLRB*, 877 F.2d 1291 (6th Cir. 1989). We believe, however, that the Sixth Circuit precedent on which the Respondent relies is distinguishable.

In *Airstream*, the Sixth Circuit found that the employer's "President's Advisory Council" (PAC) was not a statutory labor organization because it did not deal with wages or rates of pay, did not involve itself in or purport to accomplish the settling of grievances, and did not attempt to resolve labor disputes with individual employees.¹⁰ In contrast, the Plant Council here was specifically assigned by the Respondent to de-

velop policies concerning wages and benefits, work rules and hours of operation, and to create a grievance procedure involving Plant Council member representation. There can thus be no dispute that the Plant Council was charged with responsibility for those topics listed in Section 2(5) of the Act.

Further, in *Airstream*, the Sixth Circuit found that the PAC meetings were no different from prior "rap sessions" at which employees were invited to ask questions and make suggestions.¹¹ The Plant Council, in contrast, was not a forum for suggestions but was a formalized procedure designed to make specific recommendations to management about changes in wages, hours, and other conditions of work, and the Respondent pledged itself to consider whether to accept or reject each recommendation. The Plant Council was thus not merely a means of communication between management and employees in which ad hoc proposals were made and in which management might glean some ideas and even adopt them, as the Sixth Circuit viewed the employee committee in *Airstream*. Rather, the Plant Council was directed to engage in a pattern and practice of making recommendations for management consideration.¹²

Nor is this a case in which the employee committee discussed with management issues of production problems and plant efficiency. See *NLRB v. Associated Machines*, 219 F.2d 433, 435 (6th Cir. 1955). The record evidence clearly establishes that the Plant Council was not designed to address such issues. Rather, the Respondent had created its Employee Involvement Steering Committee, which is not alleged to be unlawful, to address issues of productivity, quality, and safety. Sibilsky testified, however, that employees nevertheless were addressing issues of wages, benefits, and work rules to the latter committee. Sibilsky decided to create the Plant Council specifically to deal with issues of wages and other topics listed in Section 2(5) of the Act.

Conclusion

Accordingly, for all these reasons, we agree with the judge that the Plant Council was a labor organization dominated by the Respondent in violation of Section 8(a)(2) and (1) of the Act.¹³

¹¹ *Id.*

¹² Compare *NLRB v. Scott & Fetzer Co.*, supra, 691 F.2d at 294 (Sixth Circuit held that employee committee that was part of a company plan to determine employee attitudes regarding working conditions and other problems for the company's self-enlightenment, rather than a method by which to pursue a course of dealings, was not a "labor organization"; and emphasized the distinction between communication of ideas and a course of dealings).

¹³ Chairman Gould agrees with his colleagues that the Plant Council was a labor organization dominated by the Respondent in violation of Sec. 8(a)(2) and (1) of the Act. He notes that the control exercised by the Respondent over the Plant Council is such that the

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ture, and composition of the Plant Council was determined by the Respondent.

⁹ As the judge noted, the General Counsel has not alleged that the Respondent's establishment of the Employee Involvement Steering Committee was unlawful.

¹⁰ 877 F.2d at 1295.

REMEDY

The Unfair Labor Practice Proceeding

We agree with the judge's recommended remedy requiring the Respondent to disestablish the Plant Council. Disestablishment is the usual Board remedy whenever unlawful domination of a labor organization is found. E.g., *Keeler Brass Co.*, 317 NLRB 1110, 1114 (1995); *Electromation*, supra, 309 NLRB at 995 fn. 24 and 998.

In two decisions issued more than 50 years ago, the Supreme Court upheld the Board's authority to order disestablishment of "a company union so organized that it is incapable of functioning as a bargaining representative of employees." *NLRB v. Pennsylvania Greyhound Lines*, 303 U.S. 261, 270 (1938). See also *NLRB v. Newport News Shipbuilding Co.*, 308 U.S. 241 (1939). In *Pennsylvania Greyhound*, the Court emphasized that the Act "secure[s] to employees the benefits of self-organization and collective bargaining through representatives of the employees' own choosing." *Pennsylvania Greyhound*, supra at 267. Likewise in *Newport News*, the Court reasoned that once a labor organization has been unlawfully dominated by an employer, "disestablishment . . . may be the only effective way of wiping the slate clean and affording the employees an opportunity to start afresh in organizing for the adjustment of their relations with the employer." *Newport News*, supra at 250.

The Representation Proceeding

We further agree with the judge's recommended remedy setting aside the results of the representation election held on April 18, 1991, and directing that a second election be conducted.

It is undisputed that the Respondent emphasized the role of the Plant Council throughout the Union's organizational campaign in urging its employees to vote against the Union. Indeed, the Respondent guaranteed its employees during the organizational campaign that if the Union lost the election no changes in the policies set forth in its employee handbook would be made except through the Plant Council process.¹⁴ The Re-

freedom of choice and independence of action open to employees is too strictly confined within parameters of the Respondent's making for the Plant Council to be a genuine expression of democracy in the workplace. *Keeler Brass Co.*, 317 NLRB 1110 (1995) (Chairman Gould's concurrence). Further, the Plant Council was created for the purpose of engaging in a pattern or practice of dealing with the Respondent on employment conditions.

¹⁴ The Respondent declared in its campaign literature:

If the Union *WINS* the election:

- All wages are subject to change.
- All benefits are subject to change.
- Policies, rules, etc. are subject to change.

There is *NO* guarantee that those items will be as good as they are now.

If the Union *LOSES* the election:

spondent's campaign literature additionally pronounced that Webcor had in fact "implemented [the] Plant Council." The Respondent further portrayed the election as a stark choice between retaining the Plant Council and employee involvement processes or selecting the Union as its representative.¹⁵ Sibilsky further underscored the prominent role of the Plant Council during meetings the Respondent conducted with its employees during the organizational campaign in which he explained to employees "what was in place, where it was going, what it could do for them, what it couldn't do for them." The record evidence accordingly demonstrates that the Respondent emphasized the Plant Council process in the context of urging employees to vote against the Union throughout the critical period between the filing of the representation petition on February 19, 1991, and the election itself on April 18, 1991.

The Respondent nevertheless asserts that the Plant Council was not in fact implemented during the critical period and did not effect any changes in working conditions during the critical period. The Respondent accordingly contends that the Plant Council had only a de minimis impact on the representation election and does not warrant the conduct of a second election.

The Respondent's argument disregards the record evidence. As noted above, the Respondent specifically advised employees during the critical period that the Plant Council was in place. The Respondent does not dispute or even address the conspicuous role it ascribed to the Plant Council during the critical period in its campaign against the Union. And the Respondent concedes, as it must, that it conducted an election for the Plant Council during the critical period on February 22, 1991.

The Respondent further guaranteed its employees during the critical period that the policies in the employee handbook would not be changed except through the Plant Council process if the Union lost the election. The Respondent's campaign literature concomitantly reminded employees that the handbook included policies of significance such as double time for Sunday work and utilizing holiday and vacation hours to compute overtime. The Employer's announcement of the

- As we stated prior to this Union organizing drive,

We, the owners of Webcor:

GUARANTEE:

-The employee handbook will not be changed unless it is changed through the Employee Involvement/Plant Council process. [Emphasis added.]

¹⁵ The Respondent's campaign literature stated:

The choice you will make on [election] day is a simple one.

EITHER . . .

You will choose to hire Teamsters #332 as the sole and exclusive agent.

OR . . .

You will choose to continue a relationship with Webcor based on Employee Involvement.

Plant Council as a guarantor against change in policies of great import to employees contradicts the Respondent's contention that its actions, even if considered to be misconduct, were de minimis with respect to affecting the results of the election. The record evidence compels the conclusion that the role of the Plant Council was stressed by the Respondent throughout the critical period as a reason to vote against the Union. This case thus falls squarely within the Board's general policy of setting aside an election when an unfair labor practice occurs during the critical period. See, e.g., *Leather Center*, 312 NLRB 521, 530 (1993).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Webcor Packaging, Inc., Burton, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[Direction of Second Election omitted from publication.]

Tinamarie Papas, Esq., for the General Counsel.

Brian Michael Smith and Lawrence J. De Brincat, Esqs., of Troy, Michigan, for the Respondent.

Rodney Eaton, of Flint, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEPHEN J. GROSS, Administrative Law Judge. The General Counsel alleges that a Webcor supervisor threatened one employee because of the union activities of Webcor's work force, coercively interrogated another employee, and gave the impression that Webcor was spying on the employees' union activities, all in violation of Section 8(a)(1) of the National Labor Relations Act (the Act). But the General Counsel's major allegation is that Webcor dominated and interfered with the formation and administration of a labor organization, and contributed financial and other support to it, thereby violating Section 8(a)(2) of the Act.¹

I turn first to the alleged violation of Section 8(a)(2).

¹The Charging Party, Local 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Local 332 or the Union), filed its charge in Case 7-CA-31809 on April 25, 1991, and its charge in Case 7-CA-31896 on May 17, 1991. On June 7, 1991, the Regional Director for Region 7 issued an order consolidating cases and a notice of consolidated hearing. The Regional Director simultaneously ordered that the Union's objections to the election held in Case 7-RC-19513, which to a considerable extent parallel the alleged unfair labor practices, be consolidated for hearing with the unfair labor practice allegations. I held the hearing in Flint, Michigan, on October 29 and 30, 1992. Thereafter the General Counsel and Webcor filed briefs. Webcor admits that it is an employer engaged in commerce within the meaning of Sec. 2(2) and (6) of the Act and further admits that Local 332 is a labor organization within the meaning of Sec. 2(5) of the Act.

Webcor's "Plant Council"

Webcor manufactures corrugated boxes. It operates only one facility, a plant in Burton, Michigan. Webcor's employees are not represented by a union.

Robert Sibilsky arrived at Webcor, as vice president for operations, in September 1990. (Sibilsky is an owner of Webcor, apparently acquiring his ownership interest about the same time he became vice president of the company.) Sibilsky had been the manager of another corrugated box manufacturing company, Consolidated Packaging, prior to coming to Webcor. According to Sibilsky's credible testimony, what Sibilsky calls "employee involvement" at Consolidated Packaging led to exceedingly high quality in that plant's output—levels of quality that were, in fact, higher than at Webcor. Sibilsky accordingly was an apostle of employee involvement when he began his management of Webcor.

By "employee involvement" Sibilsky means a way of operating a plant: (1) that calls on employees, as well as management, to think up better ways of operating, primarily in respect to matters that affect productivity, quality, safety, plant cleanliness, and reduction in waste; (2) in which management proceeds in a manner that evidences a respect for what employees have to say about how things should be done in the plant; and (3) under which small numbers of employees and supervisors meet as committees in order to thrash out the best ways to improve operations and deal with problems as they crop up.

Sibilsky credibly testified that, as he sees things, unless managers of manufacturing operations do utilize employee involvement programs, competitive levels of quality and low cost cannot be achieved. In Sibilsky's words—

What surfaced in the mid-80's was something that we really knew a long time ago . . . but we didn't utilize it—the way we were going to achieve . . . quality and low cost was by involving all the people in our operation in thinking. Not checking their brains at the door, but thinking about and participating in how we are going to get better at what we do. Because if we don't get better . . . we're not going to get any business. We will not be there. It is that simple.

Sibilsky found no employee involvement in the problem-solving process when he arrived at Webcor; what was in place, as Sibilsky testified, was a "top-down type of arrangement. . . . The solutions were always top down. [The employees] weren't asked for their input on solutions to . . . quality problems, productivity problems, or the rest of it." (Sibilsky defined "top-down management" this way: where the managers of a plant, rather than asking the employees how a problem can be solved, "take it upon themselves to analyze the problem, and determine what the issues are, and then force the solution down the pipe.")

Sibilsky, as vice president of operations and an owner of Webcor, is senior to all other members of Webcor's management. The next most senior official at Webcor is Director of Manufacturing Olin Rikard. In Rikard's words, Sibilsky quickly "made it very clear that we [Webcor] were going to have employee involvement."

On November 1, 1990, Sibilsky became specific about what he wanted in the way of an employee involvement

structure: he ordered Rikard to establish an "Employee Involvement Steering Committee." That committee would have five members—three employees and two members of management. (The employee-members would be chosen by lot from among those who volunteered to serve on the committee.) The committee was expected to focus on issues of quality, waste reduction, housekeeping, safety, and productivity. Those were the areas, thought Sibilsky, about which the employees could be expected to have expertise and where, as Sibilsky testified, "the bang for the buck" is. The Employee Involvement Steering Committee was not to involve itself in what Sibilsky calls "policy" issues; that is, matters such as wages, work rules, hours of employment, and the like.

The Employee Involvement Steering Committee was established in mid-December 1990, held its first meeting on January 3, 1991, and held meetings weekly thereafter. (Hereafter all dates to which this decision refers occurred in 1991 unless otherwise noted.) Webcor's employees promptly began to submit matters for consideration by the committee. (The General Counsel does not allege that Webcor violated the Act in any respect by establishing the Employee Involvement Steering Committee.) But by mid-January it became clear that things were not going as Sibilsky had hoped. The problem was that many of the matters employees were asking the Employee Involvement Steering Committee to handle did not directly deal with productivity or quality or the like. Rather, they concerned policy issues. For example, suggestions coming into the Employee Involvement Steering Committee had to do with changes in the way overtime was distributed among employees, whether employees should be on or off the clock during lunchbreaks, when employees should receive their vacation pay, and whether and to what extent the Company should reimburse employees for the cost of tools and safety boots.

Sibilsky, and a labor consultant from whom Sibilsky sought advice, had recognized that the Employee Involvement Steering Committee would inevitably receive some suggestions having to do with policy issues. But Sibilsky and the labor consultant agreed that the Employee Involvement Steering Committee should not deal with such matters. A separate entity would be set up to handle them. Sibilsky's expectation had been that the establishment of this other entity would be delayed until the Employee Involvement Steering Committee had been in operation for a while.

But when suggestions dealing with policy issues began arriving on the doorsteps of the Employee Involvement Steering Committee, some arrangement had to be made to deal with them by an entity other than the Employee Involvement Steering Committee. The problem was that that committee "was getting grid-locked on what [it] could and couldn't do" (in Sibilsky's words).

A complicating factor is that it was at this point—mid-January—that several employees asked Local 332 to run an organizing effort at Webcor. Until then, there had been no union activity at Webcor since an unsuccessful unionization campaign late 1989 by the Allied Industrial Workers. (Ironically, the employees' interest in union representation appears to have been aroused by changes in procedures at Webcor that Sibilsky had, without seeking employee input, forced "down the pipe"—to use Sibilsky's phrase.)

The result of all this was that in late January and early February Local 332 got ready to begin an organizing cam-

paign at Webcor and, simultaneously, Sibilsky, after pondering what to do about providing for employee involvement in policy matters, moved toward the creation of a "Plant Council" that would deal only with such matters.

On February 11 Sibilsky ordered Rikard to establish a Plant Council in a memorandum that specified that the Plant Council would have "five hourly employee" members "who will be elected by the hourly work force" and enumerated the matters with which the Plant Council would "be involved."

By February 11 Sibilsky had begun hearing rumors about union activity in the plant. Thus the first question to consider is whether Sibilsky decided to establish the Plant Council, or decided to establish it so soon, because of the union activities of the employees.

My conclusion is that the employees' union activities affected neither the decision to establish a Plant Council nor the date on which the idea of a Plant Council was put before the employees. Considerable evidence adduced by Webcor shows that management's action regarding a Plant Council was driven by Sibilsky's views about the importance of employee involvement, by advice from a labor consultant concerning employee involvement (which advice was not based on information about union activity), and by the nature of the matters that the employees were asking the Employee Involvement Steering Committee to consider.

I note that the General Counsel contends that Local 332 handbilled at the plant on February 7—4 days before Sibilsky's order to Rikard to establish a Plant Council. But I find that the evidence fails to show that there was any handbilling that early. (A business agent of the Union testified that he distributed handbills on February 7 and then again on February 16. But he had earlier testified that the Union did not do any handbilling until after the filing of the election petition, and that occurred on February 19. Further, no one but the business agent testified that there was any overt union activity prior to the filing of the election petition.) In any event, my finding about the reasons for the establishment of the Plant Council would not change even if there had been handbilling on February 7.

On February 13, 2 days after Sibilsky ordered Rikard to establish a Plant Council, management announced to employees that there would be a meeting on February 15 to discuss the "Webcor Plant Council" and also announced that the five employee-members of the Plant Council would be chosen by an election among the employees to be held a week later.

The Employee Involvement Steering Committee had been asked to design the procedures for choosing the employee membership on the Plant Council. The committee decided that the employee-members of the Plant Council should be chosen by election from among all the production and maintenance employees. Each employee was to vote for five of the listed names.

The election was held as scheduled, on February 22. Twenty-eight employees cast ballots. But 18 of the 28 ballots were blank. Of the 5 employees receiving the most votes (on the 10 ballots that were not blank) 4 refused to serve on the Plant Council. An employee called as a witness by the General Counsel testified that, as far as he was concerned, the proposed establishment of a Plant Council was merely management's way of responding to Local 332's organizing ef-

fort. The employees' response to the election for membership on the Plant Council suggests, of course, that that feeling was widespread.

Sibilsky recognized that the election for plant council membership showed "that there wasn't any support" for the Plant Council. He accordingly ordered that everything concerning a Plant Council temporarily come to a halt.

Nonetheless, in a "Dear Employee" letter distributed on March 20, management contended that one reason Webcor's employees ought to vote against representation by the Union was management's commitment to "employee involvement" and, in listing management's accomplishments, the letter referred to "implemented Plant Council."

The representation election was held on April 18. Fourteen employees voted in favor of representation by Local 332; 21 employees voted against representation by the Union.²

About 2 weeks later—in late April or early May—management again conducted an election to choose the employee-members of the Plant Council. As was the case in the earlier, abortive, election, management provided the ballots and the polling place, and the election was conducted during working hours, with the employees on the clock. On this occasion employees were asked to volunteer to serve on the Plant Council. The ballots named only the volunteers. The election was a success in that the employees cast complete ballots, five employee-members were chosen from among those who volunteered, and those five employees agreed to serve.

The Plant Council began meeting in May and has continued to meet regularly since then.

Here are the details of what the plant council is and how it operates.

The Membership of the Plant Council; the Decisional Process

The Plant Council has eight members: five employees (as already discussed) and three members of management. The management members are the two most senior officials at the plant (the director of manufacturing and the plant manager), and a lower-ranking Webcor official. If an employee-member of the Plant Council is promoted into management, that individual leaves the council and the employee who received the next highest vote at the previous election for plant council members replaces the departing individual.

Employees choose only the employee-members of the Plant Council; they do not select the management members. It is not altogether clear whether there has been any decision concerning the term of an employee-member on the Plant Council. But Sibilsky apparently planned that each employee-member of the Plant Council would remain on the council for a maximum of about a year.

An employee-member of the Plant Council called as a witness by the General Counsel agreed that each member has an "equal say . . . in terms of the ability to bring topics up and discuss topics." The chairmanship of the Plant Council rotates, so that a different member chairs each meeting. As a result, sometimes an employee-member of the Plant Council

chairs the meeting, sometimes a management-member does.

In theory the members of the Plant Council can vote on an issue, with a simple majority determining the outcome. In practice the members strive to reach a consensus and, as of the hearing, have always succeeded. (The employee-members of the Plant Council appear to be quite satisfied with the decisional process within the Plant Council. That holds true for an employee-member of the Plant Council who had actively supported Local 332 during the 1991 election campaign.)

Employees who are not members of the Plant Council bring matters to the Plant Council's attention by placing a written suggestion in a box designated for that purpose. Management puts matters before the Plant Council by having one of the management-members raise it at a plant council meeting. The Plant Council routinely invites to plant council meetings those employees who have made suggestions so that the employees can orally present their proposals.

The Kinds of Matters the Plant Council is Authorized to Deal with

I mentioned earlier that action on a Plant Council was set in motion by a February 11 memorandum from Sibilsky to Rikard. In that memorandum Sibilsky spelled out the matters that he wanted the Plant Council to concern itself with:

The Plant Council will be involved with the development of plant policies, the employee handbooks, the creation of a grievance procedure that will involve Council member representation, and with the process of hourly compensation and benefits.

The Plant Council will function as a policy development body.

All matters of plant policy, procedure, and compensation will be jointly reviewed prior to implementation by the Plant Council and Management.

By way of example, Sibilsky testified, the Plant Council could consider work rules, wages, and benefits, what the plant's hours should be, and what kinds of discipline should be meted out for specified infractions.

The Effect of a Plant Council Decision

As touched on earlier, four individuals own Webcor and are considered Webcor's senior management. Decisions of the Plant Council ordinarily are not implemented unless approved by the owners. As Sibilsky put it, no plant council decision of a "substantive nature" is put into effect without such approval. The only decisions of the Plant Council that are implemented without the owners' approval, testified Sibilsky, are decisions on "lesser issues"—decisions "that are logical to make at the level of the plant."

The Activities of the Plant Council

Matters that have come before the Plant Council include:

Tools. The issue the Plant Council dealt with was when Webcor should purchase tools for an employee (for use in the employee's work in the plant) and when should the employee be responsible for the purchase of tools. Rikard and one of the employee-members of the Plant Council drafted

²The bargaining unit: All full-time and regular part-time production and maintenance employees and truckdrivers employed by Webcor at its facility at 1220 Center Road, Burton, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.

a policy statement on the subject, the Plant Council adopted it, and the policy was implemented.

Overtime equalization. Webcor's employees had been complaining about favoritism in the way overtime work was handed out. The members of the Plant Council decided that when there was overtime work to do, management would be required to first turn to the employee (in the relevant job classification) with the lowest number of overtime hours; the employee with the highest number of overtime hours would be asked last. Seniority was to be ignored for that purpose. This overtime equalization policy has been implemented.

Safety boots. Webcor had been paying for one pair of safety shoes per year for some of its employees. The employee-members of the Plant Council proposed that, due to the nature of the work involved, some of those employees needed two pair of safety shoes per year and that Webcor should pay for both pair. The management-members of the Plant Council agreed, and Webcor now does pay for two pair of safety shoes per year for such employees.

Attendance policy. In April 1992 management proposed a revision to the plant's attendance rules. All the plant's employees were asked to consider the revision and to "respond back to the Plant Council." Within the Plant Council, the employee-members opposed implementation of the new attendance rules. The new rules were not implemented. But the members of the Plant Council did reach agreement about some changes in attendance policy, and Webcor did implement those changes.

The implication of the record as a whole is that none of these actions would have been implemented unless Webcor's owners approved of the Plant Council's decision. But the record is not entirely clear in that respect.

Temporary Restrictions on Plant Council Activities

Webcor's labor counsel advised the Company that the Plant Council should not act on matters directly affecting employee pay and benefits until the conclusion of this proceeding. The result of this advice has been that the Plant Council has considered, but not acted on, the following matters: (1) changes in incentives for perfect attendance; (2) whether each employee ought to get a paid day off when a grandparent dies; and (3) the timing of the issuance of checks covering paid vacation time.

Sibilsky testified that, as a result of counsel's advice concerning the need to await the outcome of this proceeding, matters that might affect expenditures have been considered by the Plant Council, but they have not come out in the form of recommendations. That, however, overstates the restrictions on the Plant Council, given the new policies governing tools and safety shoes that have been implemented as a result of plant council action.

When does the Plant Council Meet; Management Support

The Plant Council meets in the plant during working hours. The members of the Plant Council decided they would meet twice a month. The plant manager schedules the meeting dates, subject to change at the request of any member of the council.

Management supplies any needed materials and equipment. All members of the Plant Council are paid for the time they spend on plant council matters.

Does Webcor's Plant Council Violate Section 8(a)(2)

The question for consideration in this proceeding is not whether Webcor's Plant Council benefits Webcor's employees or harms them; or whether the Plant Council, and entities like it at other companies, would be good for America or bad. Rather, this case is about whether, in the words of Sections 2(5) and 8(a)(2) and in light of *Electromation, Inc.*, 309 NLRB 990 (1992), and its progeny, the Plant Council is a "labor organization," and whether, if it is, Webcor "dominate[d] or interfere[d] with the formation or administration" of the Plant Council "or contribute[d] financial or other support to it."

Is the Plant Council a "labor organization?" Section 2(5) defines "labor organization" as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

It is clear, of course, that Webcor's Plant Council is an "organization" within the meaning of Section 2(5), and is one in which "employees participate." See generally *Electromation*, supra. It is also clear that the Plant Council's purpose is to consider, and to take positions on, "grievances . . . wages, rates of pay, hours of employment, or conditions of work." Further, it is inescapable that the Plant Council "deals with" an employer concerning such matters. That is because, in respect to most matters the Plant Council follows a "pattern or practice" in which it, "over time, makes proposals to management" (with "management" in this case being Webcor's owners) and "management responds to these proposals by acceptance or rejection by word or deed." *E. I. du Pont & Co.*, 311 NLRB 893 (1993).³

What remains to determine is whether the employee-members of the Plant Council "acted in a representational capacity within the meaning of Section 2(5)." *Electromation*, supra;⁴ see *General Foods Corp.*, 231 NLRB 1232, 1234 (1977).

Unlike *Electromation* (at fn. 7), the employee-members of Webcor's Plant Council were not instructed "to go amongst

³ As discussed earlier, in respect to a limited number of "lesser" matters the Plant Council's decisions result directly in changes in conditions of work. As to these matters it is unclear whether there is any "dealing" with employers. The criterion would appear to be whether the management-members of the council have the power to reject proposals put forward by the employee-members. *E. I. du Pont*, supra. On the one hand, it is the Plant Council's practice to operate by consensus—which suggests that the management-members do have such veto power. Id. On the other hand, the Plant Council's rules provide for voting, in which case a simple majority determines the outcome. Since the management-members are outnumbered by the employee-members, in the case of a vote management could not reject a proposal supported by the employee-members.

⁴ But see id. at 994 fn. 20.

the other employees and find out what kind of ideas they had.”⁵ (Employees generally were invited to suggest matters for consideration by the Plant Council; however, I do not consider that to mean that the employee-members of the council acted in a representative capacity.)⁶ Rather, I got the impression that the employee-members of the Plant Council voiced their own thoughts about how to deal with whatever issue was on the table, without concerning themselves about whether those thoughts necessarily mirrored the points of view of the plant’s employees generally. And the testimony of employee plant council member Mathew Newcomb indicates that representation was not what the members of the Plant Council—either employee-members or management-members—had in mind: According to Newcomb, “we [the Plant Council members] are hoping to settle the problems and make the hourly employees and management see the same thing at the same level.”

But for all that, the employee-members of the Plant Council surely “represent” Webcor’s employees generally. The point is that the employee-members of the Plant Council are selected by election in which the voters are the plant’s employees. Virtually by definition, the employee-members of the Plant Council are thereby the representatives of the employees. That is, given their election to the Plant Council by the employees, the employee-members of the Plant Council are “representatives” of the employees in that they “stand for . . . a class” (in the words of *Webster’s Third International Dictionary*)—the class being Webcor’s production and maintenance employees.⁷

I conclude, therefore, that Webcor’s Plant Council is a labor organization within the meaning of Section 2(5) of the Act.

Domination and interference by Webcor. All this brings us to the question of whether Webcor “dominate[d] or interfere[d] with the formation or administration” of the Plant Council and whether Webcor “contribute[d] financial or other support to it.”

Webcor did all of that. The Plant Council was “the creation of management,” its “structure and function” were “determined by management,” and its “continued existence depends on the fiat of management.” *Electromation*, supra. Additionally the Plant Council’s meetings are conducted on Webcor’s premises,⁸ Webcor pays the employees for the time they spend on Plant Council matters,⁹ and Webcor contributes whatever additional slight financial support the Plant Council needs.

Webcor’s motivation in establishing the Plant Council. The Plant Council was created because of Sibilsky’s belief that Webcor would benefit by involving employees in the

decisional processes. Concomitantly, Webcor’s Plant Council was not created because of any antiunion animus on the part of Webcor’s management. But “Sec. 8(a)(2) does not require a finding of antiunion animus or a specific motive to interfere with Sec. 7 rights.” *Electromation*, 309 NLRB at 995 fn. 24.

Webcor points out, on brief, that the Webcor “employees had expressed an interest in the formation of a Plant Council in 1989”—during the Allied Industrial Workers’ organizational campaign. But that is beside the point if only because such expression of interest did not play a role in Sibilsky’s decision to establish the Plant Council.

As for the indications in the record that Webcor’s employees are pleased to have a Plant Council, that too is irrelevant to the question of whether Webcor violated Section 8(a)(2). *Electromation*, supra at fn. 24.

Webcor’s Plant Council—Conclusion

Based on the foregoing findings and conclusions, I further conclude that Webcor violated Section 8(a)(2) of the Act.

The Alleged Violations of Section 8(a)(1)

Employee Mathew Newcomb testified that, soon after the Union had filed its election petition, Plant Manager Rikard told Newcomb that Rikard had heard that Newcomb was one of the leaders of the unionization effort and asked Newcomb why he supported the Union. At the time Newcomb had not made public his position regarding the Union. The General Counsel claims that Webcor, by coercively interrogating an employee and giving an impression of surveillance of the employees’ union activities, thereby violated Section 8(a)(1). Rikard, however, denied questioning Newcomb about Newcomb’s role in or support for the Union, and Rikard’s testimony was equally as credible as Newcomb’s. The General Counsel, that is to say, failed to carry his burden of proof. I accordingly shall recommend that this allegation be dismissed.

Maintenance employee Ricky Middleton testified that, on the day preceding the representation election, Rikard said to Middleton, “I don’t know what we’re going to do with you if the Union is voted in.” There had been widespread rumors in the plant that Webcor was going to reduce the number of employees in its maintenance department. If Rikard did utter such a statement, then, it constituted a threat that unionization might cost Middleton his job. But Rikard denied saying anything to Middleton about the Teamsters and denied threatening Middleton with job loss. Again, Rikard’s testimony was equally as credible as Middleton’s, and I shall therefore recommend that the allegation be dismissed.

REMEDY

As requested by the General Counsel, the following recommended Order requires Webcor to disestablish the Plant Council. The General Counsel does not ask that I order Webcor to undo actions taken as a result of plant council recommendations. (As indicated earlier, plant council recommendations implemented by Webcor include, for example, rules covering payment by Webcor, in certain circumstances, of the costs of safety boots and tools.) And since it seems to me that more would be lost than gained by ordering such

⁵See also *Ryder Distribution Resources*, 311 NLRB 814 (1993), in which the employee-members of the committee at issue were directed to poll the other employees concerning the various proposals discussed in committee meetings.

⁶For other considerations regarding employee suggestion box procedures, see *E. I. du Pont* at fn. 11 and accompanying text.

⁷Compare, for example, the “Communications Committee” in *Sears, Roebuck & Co.*, 274 NLRB 230, 244 (1985), in which “the employees on the committee were not selected by their fellow employees” but instead participated “on a rotation basis.”

⁸See, e.g., *Peninsula General Hospital Medical Center*, 312 NLRB 582 (1993).

⁹Id.

an undoing, the recommended Order imposes no such requirement.

There remains the question of whether the April 18, 1991 representation election should be set aside.

In that regard, one of the Union's objections states that:

Since on or about February 19, 1991, the Employer has been trying to bargain with the employees to avoid having to go to an election with Teamsters Local 332.

While I have found that not to be the case, the objection does put into issue the question of whether Webcor's actions regarding the Plant Council warrant setting aside the representation election. And since "the Board's general policy is to set aside an election whenever an unfair labor practice occurs during the critical period" (*Video Tape Co.*, 288 NLRB 646 fn. 2 (1989)), the only remaining question is whether any Webcor actions between February 19 (the day on which the petition was filed) and April 18 regarding the Plant Council violated the Act. That question arises because the Plant Council did not begin acting until May 1991 and its employee-members at that time had been selected by a vote that occurred after the representation election.

I have found that on February 22 (i.e., subsequent to the filing of the election petition), an election was held in the Webcor plant to select the employee-members of the Plant Council. It is true that, because of employee resistance, Webcor set aside the results of that election. But the act of holding the February 22 election would itself appear to constitute interference with the formation of a labor organization and thus be a violation of Section 8(a)(2). Moreover Webcor's management contended during the Union's campaign—as an argument against unionization—that the Plant Council had been "implemented"; that is, that the Plant Council existed. (Presumably Webcor's theory at the time was that the Plant Council, while for the moment inactive, would begin operating as soon as its membership was selected.)

The recommended Order accordingly sets aside the representation election held on April 18, 1991, and remands Case 7-RC-19513 to the Regional Director for Region 7 for the purpose of conducting a new election.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, Webcor Packaging, Inc., Burton, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹⁰If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Dominating, assisting, or otherwise supporting the Plant Council.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately disestablish the Plant Council.

(b) Post at its facility in Burton, Michigan, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the election held in Case 7-RC-19513 on April 18, 1993, be set aside and the case remanded to the Regional Director for Region 7 for the purpose of conducting a new election.

¹¹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT dominate, assist, or otherwise support the Plant Council.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately disestablish the Plant Council.

WEBCOR PACKAGING, INC.